

Morgan Lewis

Susan F. DiCicco

Partner

+1.212.309.6640

susan.dicicco@morganlewis.com

March 11, 2022

VIA ECF

Honorable Frederic Block
United States District Court Judge
United States District Court, E.D.N.Y.
225 Cadman Plaza East
Brooklyn, New York 11201

Re: **Status Report re *Oak Fin. Group v. Infinity Q Div. Alpha Fund, et al.*, No. 1:21-cv-03249-FB-MMH (“Oak Financial”)**

Dear Judge Block:

We represent Defendants Trust for Advised Portfolios (“TAP”) and its officers Christopher E. Kashmerick, Russell B. Simon, and Steven J. Jensen in the above-referenced action. Pursuant to this Court’s Order of December 22, 2021, we write on behalf of all Defendants in this action to provide a status update concerning mediation and settlement discussions in two related putative securities class actions and to request a pre-motion conference with respect to Defendants’ intended motions to dismiss.

On December 22, 2021, counsel for Plaintiff in this action filed a letter on behalf of all parties (Dkt. 26) to provide a status update as directed by this Court’s December 14 Order. The letter advised the Court that the parties to two putative class actions arising from the same facts as this case and asserting overlapping claims—one in federal court and one in New York state court¹—had begun mediation efforts that the parties hoped would resolve both actions. The letter observed that any resolution of these two actions would substantially affect “the scope of further proceedings in this action,” to the extent that Plaintiff in this action did not opt out of such resolution. The letter also requested on behalf of all Defendants in this action that Defendants’ deadline to answer or otherwise respond to the complaint be extended to March 11, 2022, and advised that Plaintiff Oak Financial did not object to the request. The same day, the Court issued an Order granting the extension, and ordering that by March 11, 2022, Defendants “shall either serve and file an answer to the complaint, a letter requesting a pre-

¹ The federal action is *Yang v. Trust for Advised Portfolios, et al.*, No. 1:21-cv-01047-FB-MMH, and the state action is *In re Infinity Q Diversified Alpha Fund Securities Litigation*, No. 651295/2021 (N.Y. Sup. Ct., Comm Div.) (Borrok, J.).

Morgan, Lewis & Bockius LLP

101 Park Avenue
New York, NY 10178-0060
United States

T +1.212.309.6000
F +1.212.309.6001

March 11, 2022

Page 2

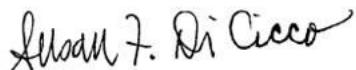
motion conference or a further status report letter as to the mediation and settlement discussions in the related case and pending State Court Action.”²

Since December 2021, the parties in the two related class actions have been engaged in mediation and settlement discussions with a private mediator. These discussions have been productive but have not yet resulted in a resolution of either related action. Accordingly, on behalf of all Defendants in this action, we respectfully request a pre-motion conference to discuss with the Court a schedule for briefing Defendants’ intended motions to dismiss.

The particular grounds for the motions to dismiss vary by Defendant, and for present purposes we believe it appropriate to summarize them generally. The bases for Defendants’ anticipated motions to dismiss Plaintiff’s claims include, *inter alia*, Plaintiff’s lack of standing to bring the asserted claims, failure to satisfy the heightened pleading standards under the Private Securities Litigation Reform Act or the Federal Rules of Civil Procedure, failure to state a claim under Sections 11, 12(a), or 15 of the Securities Act of 1933, Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, or common law fraud under New York law, and that Plaintiff’s fraud claim under New York law is barred by the Securities Litigation Uniform Standards Act. Defendants have a variety of arguments with respect to Plaintiff’s failure to state a claim, including without limitation asserting Section 11 claims against parties that are not specified in the statute, asserting Section 12(a)(2) claims against Defendants that are not statutory sellers, asserting control person claims against parties without sufficient allegations of control, and failure to properly plead scienter as to Plaintiff’s fraud-based claims. Defendants are prepared to detail these arguments further, including how each Defendant expects to assert them, in supplemental pre-motion letters if the Court believes it appropriate at this stage.

Defendants are available at the Court’s convenience for a pre-motion conference.

Respectfully submitted,



Susan F. DiCicco

cc: All counsel of record via ECF in *Oak Financial*

² Although the extension granted on December 22 applied only to certain Defendants in this action (namely, Bonderman Family Limited Partnership, LP; John C. Chrystal; Albert J. DiUllo, S.J.; Infinity Q Capital Management LLC; Infinity Q Management Equity, LLC; Steven J. Jensen; Christopher E. Kashmerick; Leonard Potter; Harry E. Resis; Russell B. Simon; Trust for Advised Portfolios; and James Velissaris), on December 27 the Court also applied the March 11 extension to the remaining Defendants (Scott Lindell; Quasar Distributors LLC; and EisnerAmper LLP).